



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

March 16, 1965

Hon. Jules Damiani, Jr.
Criminal District Attorney
Galveston County
Galveston, Texas

Opinion No. C-405

Re: Whether the Commissioner's Court of Galveston County is authorized to expend Seawall Funds (Permanent Improvement Funds) for the maintenance of the boulevard constructed on top of the Seawall in that area where the wall no longer serves as a protective work from the sea.

Dear Mr. Damiani:

Your letter requesting an opinion of this office reads in part as follows:

"In 1902 Galveston County acquired the necessary rights of way for the construction of a seawall commencing at what is commonly known as the South Jetty extending in a generally Southerly direction parallel with 6th Street to a point intersecting what is now commonly known and referred to as Galveston Seawall Boulevard, then continuing in a generally Westerly direction along the Beach to 39th Street being commonly known as the Seawall Boulevard, this area also faces and borders along the Gulf of Mexico. Since the original construction, additional filling and additional protective works have taken place in front of the area lying between the beginning point to the old Seawall and where 6th Street intersects the Boulevard; and this area is no longer exposed to wave action of the water, nor does it afford any protection from wave action since the filling in front of the area in question (beginning point to 6th Street and

Boulevard) is now filled to the same elevation as the top of the old wall.

"It is well settled that the Commissioner's Court has authority to expend funds from the Permanent Improvement Fund for the maintenance and beautification of a boulevard built in connection with a seawall so long as said seawall affords protection from the sea; however, after such seawall no longer affords any protection from the sea, can the county continue to expend the funds for the improvement or maintenance of the boulevard which was constructed in connection with such seawall? . . ."

Article XI, Section 7 of the Texas Constitution, provides in part:

"All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of two-thirds majority of the resident property taxpayers voting thereon at an election called for such purpose to levy and collect such tax for construction of seawalls, breakwaters, or sanitary purposes, as may now or may hereafter be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. . . ."

Article XI, Section 8 of the Texas Constitution, provides:

"The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities, the Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of wea walls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed in any locality."

Article XI, Section 7 and Article XI, Section 8, allow gulf coast communities to build seawalls in the interest of the public and clearly establish as their purposes the protection against floodwaters, increasing state economic wealth, and keeping ports open for the flow of commerce. White v. City of Port Arthur, 201 S.W.2d 65 (Tex.Civ.App. 1947).

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Originally, the Galveston seawall or breakwater was constructed as authorized by Article XI, Section 7, and Article XI, Section 8, and Articles 6830 and 6831 of Vernon's Civil Statutes. However, Galveston County now has Seawall funds within the Constitutional Permanent Improvement Fund. These permanent improvement funds are now the funds sought to be used for the boulevard in question.

Article VIII, Section 9 of the Texas Constitution, provides in part:

" . . . provided further that at the time the Commissioners Court meets to levy the annual tax rate for each county it shall levy whatever tax rate may be needed for the four (4) constitutional purposes; namely, general fund, permanent improvement fund, road and bridge fund, and jury fund. . . ."

Article 6839g, Vernon's Civil Statutes, provides in part:

"Section 1. The Commissioners Court of any county bordering on the coast of the Gulf of Mexico, except Nueces, Kleberg, Kenedy, Jefferson, Orange and Willacy Counties, is hereby authorized to construct breakwaters. Payment for the same shall be made from the Constitutional Permanent Improvement Fund."

Money derived from the sale of bonds or levied taxes allocated to the county's Constitutional Permanent Improvement Fund must be held in trust exclusively for permanent improvements, as the Commissioners Court has no power to levy a tax for one purpose and use the money for another. Ault v. Hill County, 102 Tex. 335, 116 S.W. 359 (1909); Sanders v. Looney, 225 S.W. 280, (Tex.Civ.App. 1920); Carroll v. Williams, 109 Tex. 155, 202 S.W. 504 (1918).

The maintenance of the boulevard in question will constitute the construction of roads rather than permanent improvements under the facts submitted. We, therefore, are in accord with your conclusion that the Commissioners Court of Galveston County is not authorized to expend permanent improvement funds of the County on any construction such as the maintenance of a boulevard erected in connection with a seawall which is no longer an integral part of the seawall project of Galveston County.

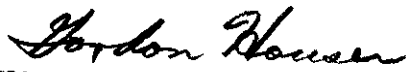
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S U M M A R Y

The Commissioners Court of Galveston County is not authorized to expend constitutional permanent improvement funds upon a boulevard erected in connection with a seawall which is no longer an integral part of the seawall project of Galveston County.

Very truly yours,

WAGGONER CARR
Attorney General


By: Gordon Houser
Assistant

GH:mkh

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
John Reeves
James Strock
Harold Kennedy
Gordon Cass

APPROVED FOR THE ATTORNEY GENERAL
BY: Stanton Stone